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8 Susanna Mercado

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

BZ

12 LAURA FINNERTY,
13 Plaintiff,
14 v.
15 SUSANNA MERCADO,
16 Defendant.

} CASE NO. C
CV 08
NOTICE OF REMOVAL

17 TO: Clerk, Superior Court
18 County of San Francisco
Small Claims
19 400 McAllister Street, Room 103
San Francisco, California 94102

20 Laura Finnerty
21 2343 47th Avenue
San Francisco, California 94116

22 PLEASE TAKE NOTICE that on this day Case No. CSM-07-823438 pending in the San
23 Francisco Superior Court Small Claims Division is being removed to the United States District Court
24 for the Northern District of California pursuant to 28 U.S.C. §§ 1441(a), 1441(b), 1339, 2679(d)(2),
25 and 39 U.S.C. § 409(a) on behalf of federal defendant Susanna Mercado. Upon direction by the
26 Attorney General of the United States, the undersigned attorneys hereby present the following facts to
27 the Judges of the United States District Court for the Northern District of California.
28

NOTICE OF REMOVAL
Finnerty v. Mercado

1 1. On November 16, 2007, plaintiff Laura Finnerty filed a small claims complaint in the San
2 Francisco Superior Court seeking damages in the amount of \$5,515.00 from Susanna Mercado, a
3 letter carrier with the U.S. Postal Service. This lawsuit arose out of an incident which occurred on or
4 about July 16, 2007 in which Plaintiff was arrested for attempting to run over Defendant with a motor
5 vehicle after Defendant did not deliver mail to her residence. Plaintiff claims that it cost her
6 \$5,000.00 for bail and \$515.00 for two days of lost wages.

7 2. A copy of the Plaintiff's Claim and Order to Go to Small Claims Court is attached as
8 Exhibit A pursuant to 28 U.S.C. § 1446(a), which constitutes the only process, pleading, or order
9 which have been received. Trial is scheduled for January 7, 2008 at 3:30 p.m. which should be
10 vacated upon the filing of this notice.

11 3. This action is one which may be removed to this Court for the reason that the federal
12 defendant was acting within the scope of her employment with the U.S. Postal Service at the time of
13 the alleged event within the meaning of 28 U.S.C. § 2679(d)(2).

14 4. Upon certification by the Attorney General, the action shall be removed to the District
15 Court at any time prior to trial. The United States Attorney is delegated under 28 C.F.R. § 15.3 to
16 make the certification provided for in 28 U.S.C. § 2679(d)(2). The Chief of the Civil Division has
17 been authorized to exercise on behalf of the United States Attorney the authority vested in him by the
18 Attorney General, pursuant to 28 C.F.R. § 15.3. The Chief has certified that Susanna Mercado was
19 acting within the course and scope of her employment. See Certification Pursuant to 28 U.S.C.
20 § 2679(d). This certification is conclusive for purposes of removal. 28 U.S.C. § 2679(d)(2).

21 5. Upon removal the United States is automatically substituted for federal defendant Susanna
22 Mercado, and this action will proceed as an action against the United States of America pursuant to
23 28 U.S.C. § 1346(b) subject to the limitations and exceptions applicable to those actions. 28 U.S.C.
24 § 2679(d)(4).

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28 NOTICE OF REMOVAL
Finnerty v. Mercado

6. A copy of this Notice is being filed with the Clerk of the Small Claims Division of the San Francisco Superior Court. That filing will automatically effect the removal of the action in its entirety to this Court for all future proceedings pursuant to 28 U.S.C. § 1446(d).

Respectfully submitted,

SCOTT N. SCHOOLS
United States Attorney

DATED: January 3, 2008

By:

Neill T. Tseng
NEILL T. TSENG
Assistant United States Attorney

DATED: January 3, 2008 By: Neill T. Tseng
NEILL T. TSENG
Assistant United States Attorney

SC-100**Plaintiff's Claim and ORDER
to Go to Small Claims Court****Notice to the person being sued:**

- You are the Defendant if your name is listed in ② on page 2 of this form. The person suing you is the Plaintiff, listed in ① on page 2.
- You and the Plaintiff must go to court on the trial date listed below. If you do not go to court, you may lose the case.
- If you lose, the court can order that your wages, money, or property be taken to pay this claim.
- Bring witnesses, receipts, and any evidence you need to prove your case.
- Read this form and all pages attached to understand the claim against you and to protect your rights.

Aviso al Demandado:

- Usted es el Demandado si su nombre figura en ② de la página 2 de este formulario. La persona que lo demanda es el Demandante, la que figura en ① de la página 2.
- Usted y el Demandante tienen que presentarse en la corte en la fecha del juicio indicada a continuación. Si no se presenta, puede perder el caso.
- Si pierde el caso la corte podría ordenar que le quiten de su sueldo, dinero u otros bienes para pagar este reclamo.
- Lleve testigos, recibos y cualquier otra prueba que necesite para probar su caso.
- Lea este formulario y todas las páginas adjuntas para entender la demanda en su contra y para proteger sus derechos.

Order to Go to Court

The people in ① and ② must go to court: (Clerk fills out section below.)

Trial Date	Date	Time	Department	Name and address of court if different from above
JAN 07 2008	3:30PM	Rm 506	(5th floor)	
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
Date: NOV 16 2007	Clerk, by _____	Melania De Luna	, Deputy	<i>[Signature]</i>

Instructions for the person suing:

- You are the Plaintiff. The person you are suing is the Defendant.
- Before you fill out this form, read Form SC-150, *Information for the Plaintiff (Small Claims)*, to know your rights. Get SC-150 at any courthouse or county law library, or go to: www.courtinfo.ca.gov/forms
- Fill out pages 2 and 3 of this form. Then make copies of all pages of this form. (Make 1 copy for each party named in this case and an extra copy for yourself.) Take or mail the original and these copies to the court clerk's office and pay the filing fee. The clerk will write the date of your trial in the box above.
- You must have someone at least 18—not you or anyone else listed in this case—give each Defendant a court-stamped copy of all 5 pages of this form and any pages this form tells you to attach. There are special rules for "serving," or delivering, this form to public entities, associations, and some businesses. See Forms SC-104, SC-104B, and SC-104C
- Go to court on your trial date listed above. Bring witnesses, receipts, and any evidence you need to prove your case.



Plaintiff (list names):

Case Number:

823438

(1) The Plaintiff (the person, business, or public entity that is suing) is:

Name: Laura finnerty Phone: (415) 379 4433Street address: 2343 47th AVENUE SANFRAN CA 94110Mailing address (if different): Street City State Zip

If more than one Plaintiff, list next Plaintiff here:

Name: _____ Phone: () _____

Street address: Street City State ZipMailing address (if different): Street City State Zip Check here if more than 2 Plaintiffs and attach Form SC-100A. Check here if either Plaintiff listed above is doing business under a fictitious name. If so, attach Form SC-103.

(2) The Defendant (the person, business, or public entity being sued) is:

Name: Susanna Mercado Phone: (415) 759-1013Street address: 1800 Taraval STREET SANFRAN CA 94110-9991Mailing address (if different): Street City State Zip

If more than one Defendant, list next Defendant here:

Name: _____ Phone: () _____

Street address: Street City State ZipMailing address (if different): Street City State Zip Check here if more than 2 Defendants and attach Form SC-100A. Check here if any Defendant is on active military duty, and write his or her name here: _____(3) The Plaintiff claims the Defendant owes \$ 5,515.00. (Explain below):

a. Why does the Defendant owe the Plaintiff money? I WAS ARRESTED ON A CITIZEN ARREST - IT COST ME 5,000.00 DOLLARS TO BAIL OUT. ALSO I LOST TWO DAYS OF WORK DUE TO LOSING MY PRIVILEGES TO ENTER PRISONS AS PART OF MY

b. When did this happen? (Date): JULY 16, 2007 Job. \$ 515.00 for two days.

If no specific date, give the time period: Date started: _____ Through: _____

c. How did you calculate the money owed to you? (Do not include court costs or fees for service.)

\$ 5,000.00 for bail out of jail \$ 515.00 two day wage lost, Check here if you need more space. Attach one sheet of paper or Form MC-031 and write "SC-100, Item 3" at the top.

Case Number:

823437

Plaintiff (list names):

- ④ You must ask the Defendant (in person, in writing, or by phone) to pay you before you sue. Have you done this? Yes No
If no, explain why not: I WAS told by police & Federal Post Marshals to not talk to her or confront her in any way. SHE did not show up for
- ⑤ Why are you filing your claim at this courthouse? *Community court to were I could talk w/ her.*
 This courthouse covers the area (check the one that applies):
- (1) Where the Defendant lives or does business. (4) Where a contract (written or spoken) was made, signed, performed, or broken by the Defendant or where the Defendant lived or did business when the Defendant made the contract.
 - Where the buyer or lessee signed the contract. lives now, or lived when the contract was made, if this claim is about an offer or contract for personal, family, or household goods, services, or loans. (Code Civ. Proc., § 395(b).)
 - Where the buyer signed the contract, lives now, or lived when the contract was made, if this claim is about a retail installment contract (like a credit card). (Civil Code, § 1812.10.)
 - Where the buyer signed the contract, lives now, or lived when the contract was made, or where the vehicle is permanently garaged, if this claim is about a vehicle finance sale. (Civil Code, § 2984.4.)
 - Other (specify): _____

- ⑥ List the zip code of the place checked in ⑤ above (if you know): 94110

- ⑦ Is your claim about an attorney-client fee dispute? Yes No

If yes, and if you have had arbitration, fill out Form SC-101, attach it to this form, and check here:

- ⑧ Are you suing a public entity? Yes No

If yes, you must file a written claim with the entity first. A claim was filed on (date): _____

If the public entity denies your claim or does not answer within the time allowed by law, you can file this form.

- ⑨ Have you filed more than 12 other small claims within the last 12 months in California?

Yes No *If yes, the filing fee for this case will be higher.*

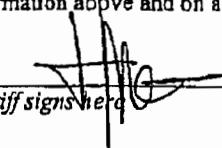
- ⑩ I understand that by filing a claim in small claims court, I have no right to appeal this claim.

- ⑪ I have not filed, and understand that I cannot file, more than two small claims cases for more than \$2,500 in California during this calendar year.

I declare, under penalty of perjury under California State law, that the information above and on any attachments to this form is true and correct.

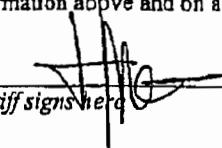
Date: _____

Laura finnerty
 Plaintiff types or prints name here


 Plaintiff signs here

Date: _____

 Second Plaintiff types or prints name here


 Second Plaintiff signs here


Requests for Accommodations

Assistive listening systems, computer-assisted, real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the trial. Contact the clerk's office for Form MC-410, Request for Accommodations by Persons With Disabilities and Order. (Civil Code, § 54.8.)

SC-100**Information for the Defendant (the person being sued)**

"Small claims court" is a special court where claims for \$5,000 or less are decided. A "natural person" (not a business or public entity) may claim up to \$7,500. The process is quick and cheap. The rules are simple and informal.

You are the Defendant—the person being sued. The person who is suing you is the Plaintiff.

Do I need a lawyer?

You may talk to a lawyer before or after the case. But you *may not* have a lawyer represent you in court (unless this is an appeal from a small claims case).

How do I get ready for court?

You don't have to file any papers before your trial, unless you think this is the wrong court for your case. But bring to your trial any witnesses, receipts, and any evidence that supports your case. And read "Get Ready for Court" at: www.courtinfo.ca.gov/selfhelp/smallclaims/getready.htm

What if I need an accommodation?

If you have a disability or are hearing impaired, fill out Form MC-410, *Request for Accommodation*. Give the form to your court clerk or the ADA/Access Coordinator.

What if I don't speak English well?

Ask the clerk if the court can give you an interpreter for free. If not, bring someone—like an adult relative or friend—who can interpret for you in court. It is best if your interpreter is not a witness or listed in this case. Or ask the clerk for a list of interpreters. (Interpreters usually charge a fee.)

Where can I get the court forms I need?

Go to any courthouse or your county law library, or print forms at: www.courtinfo.ca.gov/forms

What happens at the trial?

The judge will listen to both sides. The judge may make a decision at your trial or mail the decision to you later.

What if I lose the case?

If you lose, you can appeal. You'll have to pay a fee. (Plaintiffs cannot appeal their own claims.)

- If you were at the trial, file Form SC-140, *Notice of Appeal*. You must file within 30 days after the judge's decision.
- If you were *not* at the trial, fill out and file Form SC-135, *Notice of Motion to Vacate Judgment and Declaration*, to ask the judge to cancel the judgment (decision). If the judge does not give you a new trial, you have 10 days to appeal the decision. File Form SC-140.

For more information on appeals, see:

www.courtinfo.ca.gov/selfhelp/smallclaims/appeal.htm

Do I have options?

Yes. If you are being sued, you can:

- **Settle your case before the trial.** If you and the Plaintiff agree on how to settle the case, both of you must notify the court. Ask the Small Claims Advisor for help.
- **Prove this is the wrong court.** Send a letter to the court *before* your trial, explaining why you think this is the wrong court. Ask the court to dismiss the claim. You must serve (give) a copy of your letter (by mail or in person) to all parties. (Your letter to the court must say you have done this.)
- **Go to the trial and try to win your case.** Bring witnesses, receipts, and any evidence you need to prove your case. To make sure the witnesses go to the trial, fill out Form SC-107, and the clerk will subpoena (order) them to go.
- **Sue the person who is suing you.** File Form SC-120, *Defendant's Claim*. There are strict filing deadlines you must follow.
- **Agree with the Plaintiff's claim and pay the money.** Or, if you can't pay the money now, go to your trial and say you want to make payments.
- **Let the case "default."** If you don't settle and do not go to the trial (default), the judge may give the Plaintiff what he or she is asking for plus court costs. If this happens, the Plaintiff can legally take your money, wages, and property to pay the judgment.

What if I need more time?

You can change the trial date if:

- You cannot go to court on the scheduled date (you will have to pay a fee to postpone the trial) *or*
- You did not get served (receive this order to go to court) at least 15 days before the trial (or 20 days if you live outside the county) *or*
- You need more time to get an interpreter. One postponement is allowed, and you will not have to pay a fee to delay the trial.

Ask the Small Claims Clerk about the rules and fees for postponing a trial. Or fill out Form SC-110 (or write a letter) and mail it to the court *and* to all other people listed on your court papers before the deadline. Enclose a check for your court fees, unless a fee waiver was granted.

**Need help?**

Your county's Small Claims Advisor can help for free.

415-292-2124

M-F, 8:30AM-Noon, 1:30PM-4:30PM

Or go to "County-Specific Court Information" at:
www.courtinfo.ca.gov/selfhelp/smallclaims